



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chester R. Babst III
Babst Calland Clements Zomnir
Two Gateway Center
Pittsburgh, Pennsylvania 15222

Re: In the Matter of: Potters Industries, Inc.
Docket No.

Dear Mr. Babst:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Potters Industries, Inc. CAA Docket No. CAA-05-2011-0061. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2011.

Pursuant to paragraph 35 of the CAFO, Potters must pay the \$20,000.00 civil penalty within 30 days of the date the CAFO was filed, October 31, 2011; and Potters must complete the agreed upon supplemental environmental project as set forth in the CAFO. To complete your wire transfer, please see the payment information for making a wire transfer through EPA's Cincinnati Finance Center at http://www.epa.gov/cfo/finservices/payment_instructions.htm. Your wire transfer must display the case name, case docket number CAA-05-2011-0061 and the billing document number 2751103A060.

Please direct any questions regarding this case to Mary McAuliffe, Associate Regional Counsel, 312-886-6237.

Sincerely,

Sara Breneman

for Brent Marable
Air Enforcement and Compliance Assurance Branch, IL/IN

Enclosure

cc: Regional Hearing Clerk/E-19J
Marcy Toney, Regional Judicial Officer/C-14J
Mary McAuliffe/C-14J
Robert Hodanbosi/Ohio Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Potters Industries, Inc.
Cleveland, Ohio**

Respondent.

) **Docket No. CAA-05-2011-0061**
)

) **Proceeding to Assess a Civil Penalty**
) **Under Section 113(d) of the Clean Air Act**
) **42 U.S.C. § 7413(d)**

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Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Potters Industries, Inc., a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On March 10, 2003, EPA approved the OAC Rule 3745-31, Permits to Install New Sources of Pollution, as part of the federally enforceable SIP for Ohio (68 Fed. Reg. 2909).

10. Under OAC Rule 3745-31-05, the director of Ohio EPA shall issue a PTI on the basis of the information appearing in the application, or information gathered by or furnished to the Ohio EPA, or both, if he determines that the installation or modification and operation of the air contaminant source will not prevent or interfere with the attainment or maintenance of applicable ambient air quality standards and not result in a violation of any applicable laws.

11. On May 27, 1994, EPA approved the Ohio Administrative Code (OAC) Particulate Matter Standards Rule for Preventing Fugitive Dust, Applicability, 3745-17-08 as part of the federally enforceable SIP for Ohio (59 Fed. Reg. 27464).

12. The Particulate Matter Standard OAC Rule 3745-17-08(A) for Preventing Fugitive Dust states that the requirements of paragraph (B) of this rule apply to any fugitive dust source which is located within the areas identified in "Appendix A" of this rule and any such source shall comply with the requirements of paragraph (B) of this rule upon the effective date of June 27, 1994.

13. OAC Particulate Matter Standards Rule for Preventing Fugitive Dust, Appendix A: Applicability areas, 3745-17-08(AppA) states that the entirety of Cuyahoga County, Ohio is an area of the State of Ohio where paragraph (B) of OAC rule 3745-17-08 is applicable.

14. The Particulate Matter Standard OAC Rule 3745-17-08(B) for Preventing Fugitive Dust states that no person shall cause or permit any fugitive dust source to be operated; or any materials to be handled, transported, or stored; or a building or its appurtenances or a road to be used, constructed, altered, repaired, or demolished without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne, as appropriate to minimize or eliminate visible particulate emissions or fugitive dust.

15. On August 13, 1984, EPA approved the OAC Rule 3745-15-07, Nuisance Provision, as part of the federally enforceable SIP for Ohio (49 Fed. Reg. 32182).

16. The Nuisance Provision OAC Rule 3745-15-07(A) states that no person shall cause, permit or maintain any such public nuisance as the emission or escape into the open air from any source or source of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such a manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for SIP violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Potters owns and operates a glass recycling facility located at 2380 West Third Street, Cleveland, Ohio (the facility) in Cuyahoga County.

19. Potters is a “person,” as that term is defined in the OAC Rule 3745-15-01, General Provisions Definitions as part of the federally enforceable SIP for Ohio (49 Fed. Reg. 32182).

20. Potters obtained a Permit to Install (PTI), Permit number 13-3171, for Unit P010, Furnace 1R, on November 20, 1996 from the Ohio EPA.

21. Prior to August 4, 2011, Potters’ PTI required that total particulate from Unit P010 must not exceed 1.08 pounds/hour (lbs/hr) and 4.73 tons per year (tpy).

22. On November 29-30, 2010, in response to EPA’s October 13, 2010 Information Request, Potters conducted particulate matter (PM) emissions testing at the Cleveland facility for Unit P010 at the inlet and the outlet of both the furnace baghouse and the air transport baghouse associated with the unit, and in accordance with Potters’ Permit to Install (PTI 13-3171).

23. Potters’ PTI 13-3171 Additional Terms and Conditions (3) requires that baghouse BH-1R (furnace baghouse) must maintain overall control efficiency of 99.5% at all times.

24. On December 27, 2010, Potters performed dye testing on the furnace baghouse and the air transport baghouse that identified 39 of the 304 bags in need of being replaced.

25. All 39 bags were replaced with new bags on December 27, 2010.

26. On December 28, 2010, Potters received stack test results for the November 29-30, 2010 stack test indicating measured PM emissions at the outlet of the furnace baghouse in excess of the 1.08 lb/hr and 4.73 tons per year emission limits specified in Potters’ Permit to Install (PTI 13-3171).

27. Between February 22 and February 24, 2011, Potters replaced all 304 bags in the furnace baghouse as part of its annual maintenance program.

28. After completing the baghouse changeout, on May 19-20, 2011, Potters conducted a stack test demonstrating compliance with the permitted emission limits.

29. EPA alleges that, prior to May 19-20, 2011, Potters failed to demonstrate that it maintained required furnace baghouse control efficiency of 99.5% as required by Potters' PTI 13-3171.

30. In addition, EPA alleges that Potters caused and permitted visible fugitive dust from its baghouse and facility to become airborne and escape the facility property in violation of the Particulate Matter Standards for Preventing Fugitive Dust in the Ohio SIP at 3745-17-08(B).

31. EPA alleges that Potters allowed the escape of visible particulate matter and dust into the open air from the facility in such amounts as to be deemed a public nuisance in violation of the Nuisance Provision in the Ohio SIP at 3745-15-07(A).

32. EPA further alleges that Potters failed to operate its baghouse associated with Emission Unit P007 within the PTI 13-04607 permitted range of 1"-6" of water.

33. On August 12, 2011, Potters completed the installation of a cover on the outdoor cullet pile. On February 18, 2011, Potters installed a leak detection system on the furnace baghouse for Unit P010. By not later than November 15, 2011, Potters shall apply for a modification to its current permit, to reduce its PM emissions (combined total for both baghouse stacks) to not exceed 2.0 lbs/hr and 8.76 tons per year from Unit P010.

Civil Penalty

34. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, cooperation, prompt return to compliance, and agreement to

perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$20,000.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,000 civil penalty by wire transfer.

36. Respondent must send a notice of payment that states "In the matter of Potters Industries, Inc.," the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Mary McAuliffe at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 54, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

39. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment

was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environment Project

Diesel Emissions Reduction Project

40. Project Summary. Respondent will retrofit a fleet, fleets, or portion thereof, of diesel buses, either school, intra-city, or inter-city buses, or diesel vehicles contracted for public use, located within 50 miles of Cleveland, Ohio, as a Supplemental Environmental Project (SEP).

41. Project Detail. Respondent will spend a minimum of \$50,000 to retrofit a fleet, fleets, or portion thereof of diesel buses, either school, intra-city, or inter-city buses, or diesel vehicles contracted for public use. Respondent may utilize a third party to assist in the implementation of the SEP. Such third party may assess administrative costs not to exceed 10% of the total project value (i.e., not to exceed \$5,000). Such third party costs shall be considered as Project Costs for purposes of the \$50,000 commitment. The projects will occur within fifty miles of Cleveland, Ohio, and will be suggested by Respondent based on project applications previously submitted to EPA pursuant to one of several grant or funding programs under which interested parties can seek assistance in performing diesel bus retrofits. Historically, Region 5 has received deserving applications for a greater amount of funds than it is able to disburse. As a result, Region 5 regularly has information about one or more deserving projects that do not

receive funding. The retrofit projects identified by Respondent may come from applications such as these, or from other sources.

42. The project costs will be calculated using a methodology similar to that used by EPA in calculating the cost of other diesel retrofit applications and will include Respondent's oversight costs. Following identification and cost estimation, Respondent will submit to EPA a list of projects, for EPA approval.

43. Any projects approved by EPA pursuant to this SEP will:

- a. be geographically located within 50 miles of Cleveland, Ohio;
- b. utilize one of the technologies previously verified by EPA for diesel retrofits, as shown at <http://epa.gov/cleandiesel/verification/verif-list.htm>, or the CARB verification list at <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>, or EPA's SmartWay idle reduction verification list at <http://www.epa.gov/smartway/technology/index.htm>; and
- c. result in the reduction of diesel particulate emissions.

44. Once approved, Respondent will ensure completion of the retrofits. Confirmation will be obtained from the fund recipients or the entities undertaking the retrofits, confirming that one or more of the verified technologies was installed on the selected fleet or fleets, or portions thereof.

45. Project Timeline. Respondent will endeavor to identify the selected projects within 90 days of the effective date of this CAFO and will attempt to secure the completion of the projects within 120 days thereafter. Thus, the completion of the installation of retrofits totaling \$50,000 will be complete within 210 days of the effective date of this CAFO. If the

project requires more time to implement (for example, due to the need for equipment testing), EPA will provide additional time to extend the timeframe.

46. Respondent must submit a SEP completion report to EPA within 30 days after completion of installation of diesel retrofits, by no later than 240 days of the effective date of this CAFO, unless an extension of time is provided by EPA. This report shall contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

47. At the time it certifies completion of the SEP, Respondent will also provide the following certification:

Respondent certifies under penalty of law that it would have agreed to perform a comparably valued, alternative project other than a diesel emissions reduction Supplemental Environmental Project, if the Agency were precluded by law from accepting a diesel emissions reduction Supplemental Environmental Project.

48. Project Costs. Respondent will spend \$50,000 for this project.

49. Project Completion Criteria. This project will be deemed to be complete for the purposes of this CAFO if EPA-verified diesel reduction equipment is installed on the buses or other vehicles in the projects selected pursuant to Paragraphs 40-48, above.

50. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 36, above.

51. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

52. Following receipt of the SEP completion report described in paragraph 46, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 54.

53. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 54, below.

54. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 45, Respondent must pay a penalty of \$50,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 48, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 48, Respondent must pay a penalty of \$10,000.
- d. If Respondent did not submit timely the SEP completion report as required by paragraphs 46 and 47, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$400	15 th through 30 th day
\$500	31 st day and beyond

55. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

56. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 35, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

57. Any public statement that Respondent makes referring to the SEP must include the following language: "Potters Industries, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Potters Industries, Inc. for violations of the Clean Air Act."

58. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

59. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in Notices of Violation issued by EPA on August 12, 2010 and March 11, 2011, and in this CAFO.

60. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

61. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 59, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

62. Respondent certifies that it is complying fully for its Emission Units P007 and/or P010 with the following: the PM emissions limit in its August 4, 2011 Permit No: P0107074; the furnace baghouses (BH-1R and BH-AT1) control efficiency of 99.5% as required by Potters' August 4, 2011 Permit No: P0107074; the Nuisance Provision in the OAC Rule 3745-15-07 (Nuisance Provision); OAC Rule 3745-17-08 (PM Standards for Preventing Fugitive Dust); and the permitted pressure drop range of 0.4 to 6 inches of water for the baghouses associated with Emission Unit P007, in its December 22, 2010 PTI Permit No: P0107072.

63. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

64. The terms of this CAFO bind Respondent, its successors, and assigns.

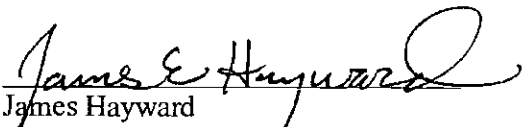
65. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorney's fees in this action.

67. This CAFO constitutes the entire agreement between the parties.

Potters Industries, Inc., Respondent

Date 9/30/11


James Hayward
Vice President of Plant Operations
Potters Industries, Inc.

**Consent Agreement and Final Order
In the Matter of: Potters Industries, Inc.**

United States Environmental Protection Agency, Complainant

Date

9/30/11



Cheryl L. Newton

Director

Air and Radiation Division

U.S. Environmental Protection Agency

Region 5


**Consent Agreement and Final Order
In the Matter of: Potters Industries, Inc.
Docket No.**

CAA-05-2011-0061

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-30-11
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order
In the Matter of: Potters Industries, Inc.
Docket No. CAA-05-2011-0061

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0061, with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Chester R. Babst III
Babst Calland Clements Zomnir
Two Gateway Center
Pittsburgh, Pennsylvania 15222

I certify that I mailed a copy of the CAFO by first-class mail, addressed as follows:

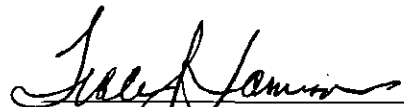
Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

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SEP 30 2011
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard/Mail Code C-14J
Chicago, Illinois 60604

On the 30 day of September 2011.



Betty Williams
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7671 5522